

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN COURTHOUSE
500 PEARL STREET, COURTROOM 17B
NEW YORK, NY 10007
(212) 805-6715

RICHARD M. BERMAN
United States District Judge

APRIL 2017

INDIVIDUAL PRACTICES OF HON. RICHARD M. BERMAN

Matters before Judge Berman shall be conducted in accordance with the following practices unless otherwise ordered by the Court.

1. Communications with Chambers

A. Letters. Communications with Chambers shall be by letter. Unless there is a request to file a letter under seal or a letter contains sensitive or confidential information, letters should be file electronically on ECF, with courtesy copies simultaneously delivered to Chambers. Copies of correspondence between counsel shall **not** be filed on ECF or otherwise sent to the Court.

B. Telephone Calls. Telephone calls to Chambers are **not** permitted except in emergency situations. Any calls to Chambers must include counsel for both sides to the litigation and may not be ex parte.

C. Faxes. Faxes to Chambers are **not** permitted.

D. Requests for Adjournments or Extensions of Time. Requests for adjournments or extensions of time shall be in writing and shall be made at least 48 hours prior to the scheduled date. Requests shall state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether previous requests were granted or denied, and (4) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed scheduling order (reflecting only business days) must be attached.

2. Motions

A. Pre-Motion Conferences in Civil Cases. A pre-motion conference with the Court is required before making any motion, except: (1) motions that are required by Federal Rule of Appellate Procedure 4(a)(4)(A) to be made by a date certain; and (2) pro hac vice motions. To arrange a pre-motion conference, the moving party shall submit a letter not to exceed **three** pages (double-spaced) in length setting forth the bases for the anticipated motion. The opposing party may respond with a letter not to exceed **three** pages (double spaced) within three business days of receiving the pre-motion letter.

Motions to dismiss in civil cases will be decided “with prejudice” where the opposing party has been given the opportunity to amend the pleadings after receiving the moving party’s pre-motion letter.

Any application presented by order to show cause must include a written explanation (with case and statutory authority) why ordinary motion practice is not available and why the matter is appropriately treated as an order to show cause.

B. Courtesy Copies.

1. Pleadings. Courtesy copies of pleadings (including Fed. R. Civ. P. 7.1 Statements), marked as such, shall be submitted to Chambers as soon as possible after filing.

2. Motion Papers. Courtesy copies of all motion papers and any accompanying affidavits or exhibits, marked as such, shall be submitted to Chambers at the time the papers are served. Courtesy copies of any accompanying affidavits or exhibits shall be bound, labeled, tabbed, and indexed.

C. Memoranda of Law. Memoranda of law in support of and in opposition to motions may be up to 25 pages (double-spaced), and reply memoranda may be up to 10 pages (double-spaced). All memoranda of 10 pages or more shall contain a table of contents and a table of authorities. Use double spacing, one-inch margins, and 12-point font for text and footnotes (footnotes may be single-spaced).

1. Opening Memoranda. All motions shall be filed **jointly** if there is more than one movant on a side (i.e., plaintiffs or defendants) unless the Court provides otherwise.

2. Opposition/Cross-Motion. All parties opposing a motion shall file a joint opposition.

Any cross-motion shall be included in the opposition brief.

3. Reply. One reply may be filed in support of a motion. Replies shall include any opposition to a cross-motion.

D. Affidavits and Exhibits. The Court does not generally perceive the need for extensive affidavits or exhibits in support of or in opposition to a motion.

E. Filing of Motion Papers. Motion papers shall be filed promptly after service.

F. Oral Argument on Motions. Most motions are resolved “on submission.” Parties may request oral argument at a pre-motion conference.

G. Motions for Final Approval of Class Settlement and Attorneys' Fees. Parties moving for final approval of a class settlement and for class counsel's fees should include in their motion papers, (1) class counsel's contemporaneous time sheets, which may be submitted for in camera review; (2) invoices documenting class counsel's requested expenses; (3) the claims administrator's requested fees and expenses, which may include an estimated amount of fees and expenses to administer the settlement fund after final approval of the settlement and approval of any final distribution plan; (4) the claims administrator's contemporaneous time sheets, which may be submitted for in camera review; and (5) invoices documenting the claims administrator's requested expenses.

Any subsequent motion for an award of claims administrator's fees and expenses should include contemporaneous time sheets and invoices documenting the fees and expenses incurred since the filing of the motion for final approval of settlement and for class counsel's fees.

Neither attorneys' fees or expenses nor the claims administrator's fees or expenses are to be paid until at least 80% of the settlement fund has been distributed, i.e. checks have been mailed, to the class.

3. Confidentiality Orders and Sealing

Litigants should assume that all pleadings and documents will appear on the public docket, with very limited exceptions.

Proposed confidentiality orders submitted to the Court shall include the following language:

“The Court retains discretion whether to afford confidential treatment to any confidential document or information contained in any confidential document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.”

No pleadings, motions, or other documents may be filed under seal without prior authorization from the Court.

4. Pre-trial Procedures

After the completion of discovery, the Court shall hold a conference to schedule the submission of pre-trial documents. No submissions other than those scheduled by the Court will be considered.

A. Joint Pre-trial Orders in Civil Cases. The parties shall submit to the Court for its approval a **joint** pre-trial order that includes the information required under Federal Rule of Civil Procedure 26(a)(3) and the following:

1. The full caption of the action;
2. The names, addresses (including firm names), and telephone and fax numbers of trial counsel;
3. A brief statement by the plaintiff(s) of the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to authorities relied upon and relevant facts as to, for example, citizenship and jurisdictional amount;
4. A brief summary by each party of the claims (including counterclaims and cross-claims) and defenses each party has asserted that remain to be tried, including citations to all authorities relied upon. Such summaries shall also identify all claims (including counterclaims and cross-claims) and defenses previously asserted that are not going to be tried;
5. A statement by each party as to whether the case is to be tried with or without a jury, the number of trial days needed, and the estimated time needed for direct and cross-examination of each witness;
6. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented);
7. All stipulations and/or agreed statements of fact or law;
8. A list of witnesses each party intends to call in its case-in-chief, in the order of appearance, indicating whether each witness will testify in person or by deposition and a brief description of the testimony of each witness (including the qualifications of any expert witnesses);
9. A list and brief explanation of all exhibits to be offered by each party. Any objections, and the basis for each objection, shall be noted following the exhibit objected to; and
10. A brief statement of the damages claimed, including dollar amounts, for each claim, counterclaim, and cross-claim.

Expert testimony will not be admitted at trial unless the party calling such expert has complied with Federal Rule of Civil Procedure 26(a)(2).

B. Filings Prior to Trial in Civil Cases. The parties shall file at the time of the filing of any joint pre-trial order, the following:

1. In jury cases—joint jury instructions, joint proposed voir dire questions, a joint verdict sheet, and any motions in limine. Submissions that are not joint will be rejected. Responses to motions in limine shall be due 7 days after filing.

Any objections to a party's proposed jury instruction shall be noted following the instruction objected to, and an alternative instruction shall be proposed in the same document. In addition to the courtesy copies required under Paragraph 2.B, proposed jury instructions shall be submitted to the Court in electronic format;

2. In non-jury cases—an affidavit for each witness (of up to 10 pages double-spaced) shall serve as that witness's direct testimony. Live cross-examination and re-direct will occur at trial; and

A statement of the elements of each claim, counterclaim, cross-claim, or defense, together with a summary of the facts relied upon to establish each element.

C. Filings Prior to Trial in Criminal Cases. The parties shall file in accordance with the schedule set by the Court and the parties, the following:

1. Joint jury instructions, joint proposed voir dire questions, a joint verdict sheet, and any motions in limine. Submissions (other than motions in limine) that are not joint will be rejected. Responses to motions in limine shall be due 7 days after filing unless otherwise ordered by the Court.

Any objections to a party's proposed jury instructions shall be noted following the instruction objected to, and an alternative instruction shall be proposed in the same document. In addition to the courtesy copies required under Paragraph 2.B, proposed jury instructions shall be submitted to the Court in electronic format.

5. Criminal Case Sentencing Submissions

Sentencing submissions, including any letters, are to be filed electronically via ECF. See Individual Rules of Practice of Hon. Richard M. Berman for Criminal Case Sentencing Proceedings. Letters must be grouped and filed together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.

If a party seeks to redact or seal information (beyond the eleven categories of information identified in the Southern District of New York's ECF Privacy Policy), an application to do so must be served and filed at the time the sentencing memorandum is served. The application should clearly identify the proposed redaction and explain the reasons for the redaction or sealing and state whether opposing counsel agrees to the redaction or sealing. The redacted version must be filed on ECF. The unredacted version shall be submitted to Chambers for the Court's determination as to whether filing such document under seal is appropriate.

A defendant's sentencing memorandum and the Government's sentencing memorandum are due in accordance with the schedule set by the Court.
